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DEPARTMENT OF COMMERCE

International Trade Administration

[C-489-836]

Dried Tart Cherries from the Republic of Turkey: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable May 13, 2019.

FOR FURTHER INFORMATION CONTACT: Maria Tatarska at (202) 482-1562 or Ajay Menon at (202) 482-1993, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On April 23, 2019, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) Petition concerning imports of dried tart cherries (cherries) from the Republic of Turkey (Turkey), filed in proper form on behalf of the Dried Tart Cherry Trade Committee (the petitioner), a trade association whose members produce the domestic like product in the United States (*i.e.*, cherries).¹ The Petition was accompanied by an antidumping duty (AD) Petition concerning imports of cherries from Turkey.

¹ See the Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties: Dried Tart Cherries from the Republic of Turkey," dated April 23, 2019 (the Petition).

On April 25, 2019, Commerce requested supplemental information pertaining to certain aspects of the Petition.² The petitioner submitted its response on April 29, 2019.³

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of Turkey (GOT) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to cherry growers and cherry processors in Turkey, and that imports of such products are materially injuring, or threatening material injury to, the domestic cherries industry in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(E) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support necessary for the initiation of the requested CVD investigation.⁴

Period of Investigation

Because the Petition was filed on April 23, 2019, the period of investigation is January 1, 2018, through December 31, 2018.

² See Commerce's Letters, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Dried Tart Cherries from the Republic of Turkey: Supplemental Questions," (General Issues Supplemental Questionnaire); and "Petition for the Imposition of Countervailing Duties on Imports of Dried Tart Cherries from the Republic of Turkey: Supplemental Questions," both dated April 25, 2019.

³ See the Petitioner's Letters, "Dried Tart Cherries from Turkey: Response to General Issues Questionnaire" (General Issues Supplement); and "Dried Tart Cherries from Turkey: Response to Countervailing Duty Questionnaire," both dated April 29, 2019.

⁴ See the "Determination of Industry Support for the Petition" section, *infra*.

Scope of the Investigation

The product covered by this investigation is cherries from Turkey. For a full description of the scope of this investigation, *see* the Appendix to this notice.

Comments on the Scope of the Investigation

During our review of the Petition, Commerce issued questions to, and received responses from, the petitioner pertaining to the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.⁵

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope).⁶ Commerce will consider all comments received from interested parties and, if necessary, consult with interested parties prior to the issuance of the preliminary determination. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on June 3, 2019, which is the next business day after 20 calendar days from the signature date of this notice.⁷ Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on June 13, 2019, which is 10 calendar days from the initial comments deadline.⁸ If scope comments or rebuttal comments include factual information,⁹ all such factual information should be limited to public information.

Commerce requests that any factual information parties consider relevant to the scope of the investigation be submitted during this period. However, if a party subsequently finds that

⁵ See General Issues Supplemental Questionnaire, at 3-4; *see also* General Issues Supplement, at 3-8.

⁶ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁷ Because the deadline falls on a Sunday (*i.e.*, June 2, 2019), the deadline becomes the next business day (*i.e.*, June 3, 2019).

⁸ See 19 CFR 351.303(b).

⁹ See 19 CFR 351.102(b)(21) (defining "factual information").

additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of both the AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).¹⁰ An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified representatives of the GOT and the European Union (EU) of the receipt of the Petition and provided them the opportunity for consultations with respect to the Petition.¹¹ Consultations were held with the GOT on May 7, 2019.¹² The EU did not request consultations.

¹⁰ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance: Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx>, and a handbook can be found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

¹¹ See Commerce's Letters, "Dried Tart Cherries from the Republic of Turkey: Invitation for Consultations to Discuss the Countervailing Duty Petition," dated April 25, 2019, and "Dried Tart Cherries from the Republic of Turkey: Invitation for Consultations to Discuss the Countervailing Duty Petition," dated April 30, 2019.

¹² See Memorandum to the File, "Countervailing Duty Petition on Dried Tart Cherries from the Republic of Turkey: Consultations with the Government of Turkey," dated May 9, 2019.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the “industry.”

Section 771(4)(A) of the Act defines the “industry” as the producers, as a whole, of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,¹³ they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce’s determination is subject to limitations of time and information. Although this may result in

¹³ See section 771(10) of the Act.

different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹⁴

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.¹⁵ Based on our analysis of the information submitted on the record, we have determined that cherries, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.¹⁶

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of the Investigation,” in the Appendix to this notice. To establish industry support, the petitioner provided its own 2018 shipments of the domestic like product and compared this to the estimated total shipments of the domestic like product for the

¹⁴ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F. 2d 240 (Fed. Cir. 1989)).

¹⁵ See Volume I of the Petition, at 11-13 and Exhibit I-8.

¹⁶ For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, see Countervailing Duty Investigation Initiation Checklist: Dried Tart Cherries from the Republic of Turkey (CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Dried Tart Cherries from the Republic of Turkey (Attachment II). The CVD Initiation Checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

entire domestic industry, as reported by the Cherry Industry Administrative Board.¹⁷ The petitioner estimated the production of the domestic like product for the entire domestic industry based on shipment data. This is because production data for the entire domestic industry are not available for 2018 and the petitioner has established that shipments are a reasonable proxy for data on production of cherries.¹⁸ We relied on data provided by the petitioner for purposes of measuring industry support.¹⁹

Our review of the data provided in the Petition, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.²⁰ First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).²¹ Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.²² Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing

¹⁷ See Volume I of the Petition, at 6-7 and Exhibits I-2 and I-5; *see also* General Issues Supplement, at 8-10 and Exhibit 11.

¹⁸ See Volume I of the Petition, at 6-7 and Exhibits I-2 and I-5; *see also* General Issues Supplement, at Exhibit 11.

¹⁹ For further discussion, *see* CVD Initiation Checklist, at Attachment II.

²⁰ See CVD Initiation Checklist, at Attachment II.

²¹ See *id.*; *see also* section 702(c)(4)(D) of the Act.

²² See CVD Initiation Checklist, at Attachment II.

support for, or opposition to, the Petition.²³ Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

Injury Test

Because Turkey is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Turkey materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²⁴

The petitioner contends that the industry’s injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; adverse impact on the domestic industry’s production, capacity utilization, U.S. shipments, employment, and financial and operating performance; and lost sales and revenues.²⁵ We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that

²³ *Id.*

²⁴ *See* Volume I of the Petition, at 18 and Exhibit I-10.

²⁵ *Id.* at 15-27 and Exhibits I-5, I-9, I-10, I-13, and I-14.

these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.²⁶

Initiation of CVD Investigation

Based on the examination of the Petition, we find that it meets the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of cherries from Turkey benefit from countervailable subsidies conferred by the GOT. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 28 of the 29 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Respondent Selection

In the Petition, the petitioner named 24 companies in Turkey as producers/exporters of cherries.²⁷ Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. In the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of cherries from Turkey during the period of investigation under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the "Scope of the Investigation," in the Appendix.

²⁶ See CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Dried Tart Cherries from the Republic of Turkey.

²⁷ See Volume III of the Petitions, at Exhibit III-1.

On May 6, 2019, Commerce released CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment regarding the CBP data and respondent selection must do so within three business days of the publication date of the notice of initiation of this CVD investigation.²⁸ Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Commerce's website at <http://enforcement.trade.gov/apo>.

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. We intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the GOT via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of cherries from Turkey are

²⁸ See Memorandum to the File, "Dried Tart Cherries from the Republic of Turkey Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection," dated May 6, 2019.

materially injuring, or threatening material injury to, a U.S. industry.²⁹ A negative ITC determination in Turkey will result in the investigation being terminated.³⁰ Otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted³¹ and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.³² Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit

²⁹ See section 703(a)(2) of the Act.

³⁰ See section 703(a)(1) of the Act.

³¹ See 19 CFR 351.301(b).

³² See 19 CFR 351.301(b)(2).

established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.³³ Parties must use the certification formats provided in 19 CFR 351.303(g).³⁴ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the

³³ See section 782(b) of the Act.

³⁴ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*).

requirements of these procedures (*e.g.*, the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act and 19 CFR 351.203(c).

Dated: May 13, 2019.

Jeffrey I. Kessler,
Assistant Secretary
for Enforcement and Compliance.

Appendix

Scope of the Investigation

The scope of this investigation covers dried tart cherries, which may also be referred to as, *e.g.*, dried sour cherries or dried red tart cherries. Dried tart cherries may be processed from any variety of tart cherries. Tart cherries are generally classified as *Prunus cerasus*. Types of tart cherries include, but are not limited to, Amarelle, Kutahya, Lutowka, Montmorency, Morello, and Oblacinska. Dried tart cherries are covered by the scope of this investigation regardless of the horticulture method through which the cherries were produced (*e.g.*, organic or not), whether or not they contain any added sugar or other sweetening matter, whether or not they are coated in oil or rice flour, whether infused or not infused, and regardless of the infusion ingredients, including sugar, sucrose, fruit juice, and any other infusion ingredients. The scope includes partially rehydrated dried tart cherries that retain the character of dried fruit. The subject merchandise covers all shapes, sizes, and colors of dried tart cherries, whether pitted or unpitted, and whether whole, chopped, minced, crumbled, broken, or otherwise reduced in size. The scope covers dried tart cherries in all types of packaging, regardless of the size or packaging material.

Included in the scope of this investigation are dried tart cherries that otherwise meet the definition above that are packaged with non-subject products, including, but not limited to, mixtures of dried fruits and mixtures of dried fruits and nuts, where the smallest individual packaging unit of any such product contains a majority (*i.e.*, 50 percent or more) of dried tart cherries by dry net weight. Only the dried tart cherry components of such products are covered by this investigation; the scope does not include the non-subject components of such products.

Included in the scope of this investigation are dried tart cherries that have been further processed in a third country, including but not limited to processing by stabilizing, preserving, sweetening, adding oil or syrup, coating, chopping, mincing, crumbling, packaging with non-subject products, or other packaging, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the dried tart cherries.

Excluded from the scope of this investigation are dried tart cherries that have been incorporated as an ingredient in finished bakery and confectionary items (cakes, cookies, candy, granola bars, etc.).

The subject merchandise is currently classifiable under 0813.40.3000 of the Harmonized Tariff Schedule of the United States (HTSUS). The subject merchandise may also enter under subheadings 0813.40.9000, 0813.50.0020, 0813.50.0060, 2006.00.2000, 2006.00.5000, and 2008.60.0060. The HTSUS subheadings set forth above are provided for convenience and U.S. customs purposes only. The written description of the scope is dispositive.

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